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EXHIBITS



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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SCOTT K. GOODWIN • Director

October 17, 2017

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Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Leroy Browning
J.S.I.D. File #15-0668
L.A.S.D. File #015-18301-2607-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 20, 2015, fatal shooting of Leroy Browning by Deputy Brett Nolin of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Brett Nolin, #[redacted]

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MEMORANDUM

TO:	CAPTAIN CHRISTOPHER BERGNER Los Angeles County Sheriff's Department Homicide Bureau 1 Cupania Circle Monterey Park, California 91755
FROM:	JUSTICE SYSTEM INTEGRITY DIVISION Los Angeles County District Attorney's Office
SUBJECT:	Officer Involved Shooting of Leroy Browning J.S.I.D. File #15-0668 L.A.S.D. File #015-18301-2607-013
DATE:	October 17, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 20, 2015, fatal shooting of Leroy Browning. We have concluded that Los Angeles County Sheriff's Department (LASD) Deputy Brett Nolin acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting on December 20, 2015, at 4:09 a.m. The District Attorney Response Team responded to the scene and was given a briefing of the circumstances of the shooting and a walk-through of the scene.

The following analysis is based on reports and recordings submitted by LASD Homicide Detective Q. Rodriguez. The voluntary statement of Deputy Nolin was considered for this analysis.

FACTUAL ANALYSIS

The incident occurred at approximately 2:30 a.m. on December 20, 2015, in the parking lot and drive-through lane of the Taco Bell restaurant located at [redacted] in the City of Palmdale. At approximately 2:13 a.m., Taco Bell employees, who were in the process of closing the restaurant, saw Browning's Ford Focus stationary in the drive-through lane. They saw no one in the vehicle. The vehicle remained in that spot for 10 minutes, then began to move very slowly forward, ultimately colliding with a corner of the building that forms the interior wall of the drive-through lane.

Taco Bell employees called 9-1-1, believing that a drunk driver was behind the wheel of the Ford Focus. Five deputy sheriffs responded in three separate cars. Deputy Oleg Polissky arrived first and waited for backup to awaken Browning, who was unconscious in the driver's seat of his vehicle. Deputies Brett Nolin, Ernesto Rodriguez, Steve Quiroz and Jonathan Schnereger arrived soon afterwards.

Schnereger examined Browning for signs of intoxication and decided to place Browning under arrest for driving under the influence. Schnereger placed Browning in the backseat of his patrol vehicle and asked him to turn his back toward the door in order to place handcuffs on him. Browning began to force his way out of the backseat of Schnereger's patrol vehicle. Schnereger attempted to push Browning back into the vehicle. Nolin, Quiroz and Rodriguez joined the struggle. Browning propelled the struggle onto the ground, landing on top of Schnereger. While the deputies tried to pull Browning off of Schnereger, Browning attempted unsuccessfully to pull Nolin's firearm from the holster in his gun belt. Immediately after that, Browning attempted to pull Schnereger's firearm from his gun belt, tugging it violently several times. During the struggle for control of his firearm, Schnereger repeatedly shouted that Browning was trying to get his gun or had gotten his gun. The combined efforts of the four deputies could neither pull Browning away from Schnereger nor break his grip on Schnereger's gun belt. Fearing for Schnereger's safety, Nolin fired his service weapon five times, fatally striking Browning.

Statement of [redacted]

[redacted] was the [redacted] of the Taco Bell restaurant at the time of the incident. After closing the restaurant to the public at 2:00 a.m., [redacted] and her [redacted] were making final preparations to go home. At approximately 2:13 a.m., they noticed Browning's Ford Focus in the drive-through lane of the restaurant, near the menu and ordering microphone. No one was visible inside the car, which remained in place for approximately 10 minutes. [redacted] and [redacted] were concerned that the apparently unoccupied vehicle might be part of a ruse to lure them outside. The vehicle drove very slowly forward and [redacted] heard it strike the wall of the restaurant, after which the driver's door opened. [redacted] called 9-1-1 at approximately 2:24 a.m. and told the operator that there was a drunk driver in the driveway of the restaurant.

[redacted] watched the events preceding the incident from inside Taco Bell. Polissky arrived first, joined by additional deputies. The deputies approached Browning, who was unconscious behind the wheel of his car in the drive-through lane. [redacted] watched the deputies as they led Browning out of his car. [redacted] noted that Browning's demeanor seemed confused. Polissky entered Taco Bell seeking video footage. While [redacted] and Polissky reviewed the video footage in a back office, a broadcast involving 47th Street came through Polissky's radio that caused him to run outside. [redacted] did not see the incident. By the time [redacted] looked outside, one of the deputies was performing CPR on Browning.

Statement of Deputy Oleg Polissky

Deputy Oleg Polissky was working uniform patrol when he heard a radio broadcast of a possible DUI suspect whose car had collided with the Taco Bell restaurant. Polissky was the first deputy to arrive at the scene and saw Browning slumped over the steering wheel of his car. Browning's vehicle was against the northwest exterior wall of the Taco Bell restaurant. Browning was unconscious and held a cup containing an unknown liquid. A strong smell of alcohol emanated from the vehicle.

Polissky withdrew his firearm and held it by his chest, pointing it at Browning. Fearing that Browning might become violent if awoken suddenly, Polissky waited until the arrival of Nolin and Rodriguez, then tapped Browning's shoulder and advised him he was a deputy sheriff. Browning laughed and said, "Oh shit, a cop." Polissky noted that a strong odor of alchohol

emitted from Browning and that Browning's speech was slurred and his eyes were watery and glassy. Polissky asked Browning to exit his vehicle. Browning walked unsteadily from the car. Polissky searched Browning for weapons.

Deputy Schnereger arrived at the scene and agreed to take charge of the DUI investigation while Polissky investigated the traffic collision. Schnereger escorted Browning, unhandcuffed, to his vehicle. Polissky's attention was on the paperwork in front of him, but he saw peripherally that Browning was attempting to perform the field sobriety tests (FSTs). Polissky entered the Taco Bell restaurant and reviewed the surveillance recording with [redacted] After he had been inside for approximately 10 minutes, Polissky heard a radio broadcast from Schnereger's unit indicating that there had been an officer involved shooting. Polissky never heard any gunshots.

Polissky ran outside and saw Schnereger down on one knee, with one hand on Browning, who was on the ground on his left side. Schnereger was breathing very heavily as though he had just exerted himself. Nolin was next to Browning's head and holding him at gunpoint.

Statement of Deputy Brett Nolin

Deputy Brett Nolin was working uniformed patrol with his partner Deputy Rodriguez. They heard the broadcast describing a traffic collision in which a vehicle had struck a wall, and were the second unit to arrive. When they arrived, Nolin saw that Browning's vehicle appeared to have hopped the curb and the front driver side bumper of the vehicle was pressed up against the wall of the drive-through.

Polissky was positioned by Browning's open driver's side door and was explaining to him that it would be necessary to conduct an investigation because of the accident involving his vehicle. As Browning exited, Nolin smelled the odor of alcohol. Browning was escorted to Polissky's vehicle and searched.

Polissky ran Browning for warrants. Nolin recalled hearing that Browning was driving on a suspended license and that he had a warrant for an offense Nolin could not recall.[1] Nolin and Rodriguez began to complete the CHP impound paperwork. Rodriguez moved Browning's vehicle out of the drive-through lane. Schnereger arrived, followed by Quiroz.

Schnereger administered FSTs to Browning and escorted him to the backseat of his patrol vehicle. Once they arrived at the vehicle, Nolin heard Schnereger instruct Browning to turn his back to the door. Then Schnereger said, "Hey! Get back in the car!" Nolin saw Browning in the back seat with his head higher than expected for a passenger. Nolin and Rodriguez ran to Schnereger's car, where Nolin positioned himself to Schnereger's right. Browning was trying to force his way out of the car. Quiroz and Rodriguez joined the struggle. Nolin grabbed Browning by the jacket and tried to force him back into the vehicle. Various deputies ordered Browning to get back into the vehicle.

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[1] At the time of the incident, Browning identified himself as [redacted] and produced [redacted] identification. [redacted] is Browning's [redacted] Browning had an [redacted] at the time for an [redacted] which occurred on July 12, 2015. In that robbery, Browning shot a victim. It was also established that Browning committed an [redacted] of a [redacted] on July 6, 2015, in Lancaster. While this information was not initially known by the deputies, it provides a logical explanation as to Browning's resistance to being arrested.

Nolin felt a single, violent upward pull forward on the left side of his gunbelt, near his radio. Nolin did not know who pulled on his gunbelt, but Browning was the closest person to him. Immediately afterward, Nolin heard Schnereger saying, "He's going for my gun!" Nolin looked down and saw Schnereger's jacket raised up exposing the right side of his waist line. Browning was in a downward hunch, leaning forward and reaching toward Schnereger's waistband. Schnereger's right hand was pushing down on his (Schnereger's) gun.

At the same time, Nolin could hear Schnereger punching Browning, but could not see it. Suddenly, Nolin was violently knocked to his knees by an unknown force. When Nolin landed on his knees, he saw Schnereger in a seated position, as if trying to do a sit up. Browning was still on top of Schnereger, covering his legs, still reaching toward his waistband.
Nolin reached up and grabbed Browning's jacket and saw Browning's hand still reaching toward Schnereger's waistband. Schnereger's hands were frantically moving back and forth.

Schnereger said, "He's got my gun!" Schnereger said either, "He's reaching for my gun!" or "He's got my gun!" at least three or four times. Nolin believed that Browning had possession of Schnereger's firearm. Nolin was still on his knees. Browning was still on top of Schnereger. Nolin unholstered his firearm and pointed it at Browning.

Quiroz was standing behind Browning. Nolin shouted at Quiroz to move. Nolin fired a single round. Browning did not flinch or move and remained on top of Schnereger, reaching toward his waist with both hands. Nolin believed he had missed despite the close range. Nolin readjusted his aim and fired at Browning's chest three times with his right hand, while holding onto Browning with his left hand. Browning fell to the ground. Nolin believed he fired four rounds.

Throughout the struggle, Browning resisted the deputies' efforts to separate him from Schnereger. Four deputies working together were unable to force Browning back into the patrol car.

Nolin inspected his gun belt after the incident. His radio, which had been on the left side of his gunbelt, had a number of wires extruding from it.

Statement of Deputy Jon Schnereger

At the time of the incident, Deputy Jon Schnereger was assigned to the traffic division as a DUI enforcement deputy. Schnereger was working uniform patrol when he monitored the radio broadcast that a motorist had crashed into the Taco Bell restaurant. Schnereger assigned himself to the call and responded.

Upon arrival, Schnereger saw that Browning's vehicle had collided with a portion of the Taco Bell adjacent to the drive-through lane. Polissky was already next to Browning who was in the backseat of his patrol car. Polissky indicated that Browning may have been driving under the influence and that Browning had been cooperative so far. Schnereger assumed responsibility for the DUI investigation and removed Browning from Polissky's patrol vehicle to administer FSTs.

Initially, Browning's demeanor was cooperative and he willingly exited the vehicle and participated in FSTs. Browning's performance on some of the tests indicated that he might be

under the influence. Schnereger began the process of placing Browning under arrest for driving under the influence. Schnereger directed Browning to sit in his patrol vehicle in the back seat before placing handcuffs on him. Browning agreed to take a PAS test. Browning's initial reading on the PAS test was .17/ .14. During the discussion about the DUI investigation, Browning remarked that he was not going to jail for "stupid shit." Schnereger told Browning that he was under arrest for DUI and asked him to turn his back to the door in order to place handcuffs on him. Browning said nothing, and appeared compliant, initially putting his hands behind his back. As Schnereger reached to grasp Browning's hands, Browning pulled his body away, asking why he was being arrested. Schnereger told him he was being arrested for DUI.

Browning began to turn the left side of his body toward Schnereger. Browning placed his left foot outside the threshold of the door. Schnereger told Browning to relax, while attempting to control his hands. By this time, Quiroz had arrived and put his hands inside the car to prevent Browning from exiting. Rodriguez and Nolin joined. Browning turned to his left and charged from the car. Browning bent at the waist and speared Scheregerwith his right shoulder in Schnereger's right hip area. One of the deputies pulled Browning's hood over his head. Meanwhile, Browning was using his legs to drive Schnereger backwards.

Schnereger hit Browning three times in the back of the head with a clenched fist. It appeared that Quiroz, to his right, was attempting to gain control of Browning's right arm. Despite the punches to the back of Browning's head, he kept driving Schnereger backwards.

Schnereger felt a violent tug at his firearm, which was secured in the holster on his gun belt. The tug spun his belt nearly sideways, moving the gun from his right hip to the front of his waistband. Schnereger yelled out, "He's going for my gun!" After Browning made the initial tug on the gunbelt, he maintained a continuous grasp on the gun belt.

After the initial yanking of the gun belt, Browning maintained control of the gun belt the entire time. Schnereger brought his right hand down to cap the gun while using his left hand to try to push Browning away. There were a few additional yanking movements during the struggle. Schnereger could not tell whether Browning had the gun or the holster, but the motion of the belt was more consistent with his pulling on the butt of the gun. Schnereger again yelled out, "He's got my gun!" He recalled yelling that Browning was trying to get his gun at least three times.

Schnereger dropped to his knees to weaken Browning's grasp of his gun. Browning dropped to a squatting position and maintained his grip on the gun or gun belt. The struggle for his firearm caused Schnereger the most fear he had ever experienced while working patrol; he feared for himself as well as for his partners. Schnereger reached for his knife with his left hand during the struggle because it was more readily accessible than his backup firearm. An unknown force caused Schnereger to fall backwards. Browning maintained his grip on the gun or gun belt. Nolin discharged his firearm. After the first shot, Browning did not react. Schnereger estimated that approximately 30 to 60 seconds passed between the moment Browning first grabbed his gun until the first shot was fired. Schnereger then heard at least three shots and saw Browning fall.

Statement of Deputy Steve Quiroz

Deputy Steve Quiroz was assigned to the traffic division of the Palmdale Sheriff's station. Quiroz was patrolling in a one man unit at the time of the incident when he heard a broadcast

that Polissky had responded to a call of a possible DUI and traffic collision at Taco Bell. Quiroz responded to provide assistance. When Quiroz arrived, Polissky was inside Taco Bell, Nolin and Rodriguez were completing paperwork and Schnereger was next to his vehicle, with Browning in the backseat.

When Quiroz exited his vehicle, Schnereger was completing the PAS test on Browning. Quiroz was about to enter the Taco Bell, when he looked back at Schnereger's vehicle. The driver's side rear door was open and Browning had his left foot outside the door, pressed up against the ground. Quiroz was surprised to see Browning attempting to exit the vehicle free of handcuffs because Schnereger would habitually ask suspects to turn their backs to the open vehicle door in order to have the handcuffs placed on them. As Quiroz approached, Schnereger was leaning his upper body into the vehicle and holding Browning's left hand behind his back with his left hand and had his right hand on Browning's collar. Quiroz heard Schnereger say, "Don't do it!"

Browning pushed back against Schnereger. Quiroz walked to Schnereger and positioned himself to Schnereger's right. Both deputies used their hands and arms to push Browning back into the vehicle. Quiroz heard Schnereger say again, "Don't do it!" as Browning pushed both deputies backwards. Quiroz saw Browning move his left hand and break free of Schnereger's grip. Browning shifted his body toward the left, lowered his right shoulder and pushed into Schnereger's stomach area. Browning grabbed Schnereger in a bear hug and pressed his right shoulder into Schnereger's midsection

Quiroz tried to grab Browning's lower back. Meanwhile, one of Browning's feet was wrapped around Quiroz' ankle, in an apparent attempt to execute a foot sweep on him. Schnereger began to punch Browning in the back to try to get him off of him. Quiroz grabbed Browning's sweater, which he used to try to pull him off of Schnereger while punching him with his other hand. Schnereger said, "He has my gun, he has my gun!" in a panicked voice. Quiroz did not know whether Browning had gained complete control of the firearm or whether it had been only partially withdrawn from the holster. Quiroz pulled Browning harder to try to get him off of Schnereger, but Browning resisted and fought to stay on top of Schnereger, at times encircling his waist and clinging to him. Browning clung to Schnereger for approximately ten to fifteen seconds. Quiroz wanted to unholster his firearm, but he was afraid any round he might fire would hit Schnereger.

Rodriguez ran to Quiroz' right side and Schnereger again said, "He has my gun! He has my gun!" Nolin ran up to the fight and lowered himself to join the struggle. Quiroz saw Browning's left hand wrapped around Schnereger's waistband area, where the firearm was holstered.

Quiroz saw Nolin's firearm in his right hand, illuminated by the laser sight. Nolin said, "Move! Move!" prompting Quiroz to release Browning and take a few steps backwards. Quiroz heard one round fired by Nolin. Browning did not react. There was a pause after the first shot, then three consecutive shots from Nolin, who had his firearm in his right hand and held Browning's collar in his left hand. Nolin shot from very close range. After the three consecutive shots, Browning leaned forward and Nolin guided him to the ground while gripping Browning's collar.

Statement of Deputy Ernesto Rodriguez

Deputy Ernesto Rodriguez and his partner, Deputy Nolin, responded to the scene of the incident after hearing the radio call indicating a drunk driver had crashed into the Taco Bell restaurant. Upon arrival, Rodriguez saw Polissky talking to Browning, who was inside his vehicle, which was smashed into an exterior wall of the restaurant. As Rodriguez approached the vehicle, he smelled a strong odor of alcohol emanating from both Browning and the vehicle. Rodriguez saw a cup in the vehicle with a yellowish liquid in it.

Rodriguez and Nolin began to complete a CHP 180 form as a requisite to towing Browning's vehicle. Rodriguez heard Schnereger tell Browning to put his hands behind his back so that he could be checked for weapons. A few seconds later, Schnereger said, with a little edge of panic in his voice, "Hey man, chill out!" When Rodriguez looked, he saw Schnereger and Quiroz wrestling with Browning, whose arms were around Schnereger's waist. Rodriguez and Nolin joined the fight.

Browning was bent down, with his hands near Schnereger's waist and his firearm, but Rodriguez could not see exactly what he was doing with his hands. Rodriguez was trying to pull Browning off of Schnereger, but Browning was using countervailing force to remain attached. Rodriguez heard Schnereger saying, "He's going for my gun!" then,"He's got my gun!" Rodriguez described the events consistently with the descriptions given by the other deputies.

Physical Evidence

DNA Analysis

DNA swabs were taken from Schnereger's utility belt and his firearm. Additional swabs were taken from Nolin's utility belt, radio and baton. Each of the items tested contained at least three DNA profile contributors. In each instance, the sole major contributor was the deputy whose equipment was tested. In each instance, regarding the profiles of the minor contributors, the "complexity of the minor component" made it impossible to reach a conclusion.

Firearms Evidence

Nolin was armed with a Smith & Wesson M & P 9mm semiautomatic pistol. Nolin kept his duty weapon loaded with a total of 18 rounds. After the incident, Nolin's weapon was loaded with 13 live rounds. Five 9 mm cartridge casings were recovered in the immediate area of the incident. Nolin fired his duty weapon five times.

A loaded Springfield Armory .45 caliber semiautomatic pistol was found under the front passenger seat of Browning's vehicle, loaded with eight live cartridges.

Coroner's Findings

On December 23, 2015, Los Angeles County Medical Examiner Dr. Ajay Panchal performed an autopsy on Browning and concluded that Browning's death was caused by multiple gunshot wounds. A toxicological analysis was performed indicating the presence of alcohol, THC and amphetamines in Browning's bloodstream at the time of his death.

LEGAL ANALYSIS

"The killing of another person in self-defense is justifiable and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the other person will either kill him or cause him great bodily injury; and

2 . That it is necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a homicide. To justify taking the life of another in self-defense, the circumstances must be such as would excite the fears of a reasonable person placed in a similar position, and the party killing must act under the influence of those fears alone. The danger must be apparent, present, immediate and instantly dealt with, or must so appear at the time to the slayer as a reasonable person, and the killing must be done under a well-founded belief that it is necessary to save one's self from death or great bodily harm." CALJIC No. 5.12

California law extends this doctrine to justify the use of deadly force in defense of others. CALCRIM No. 505. In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. CALCRIM No. 3470.

Browning had a loaded firearm in his vehicle. Browning identified himself as his half-brother. By doing so, Browning might have hoped to evade detection in the course of a brief contact with law enforcement. However, if arrested, he would be fingerprinted and there would be a far greater likelihood of the discovery of the home invasion robbery warrant. When the deputies attempted to arrest Browning. he struggled with them and tried to arm himself with the firearms of first Nolin then Schnereger. The deputies may not have known why Browning fought as hard as he did, but his possession of another man's identification and a loaded firearm, and the existence of both a warrant and another potential filing, strongly corroborates their accounts of his fighting tenacity.

At the moment he was fatally shot, Browning presented an apparent, present, and immediate lethal threat not only to Deputy Schnereger, but to all the deputies within firing range. Browning was poised to gain control of Schnereger's firearm despite the efforts of the armed deputies both to separate him from Schnereger and to force him to release his grip on Schnereger's firearm. Browning could neither be controlled nor stopped.

Decisional law cautions against judging the conduct of officers with 20/20 hindsight because such scrutiny makes no accounting for the "tense, uncertain and rapidly evolving" situations faced by officers. *Graham v. Connor* (1989) 490 U.S. 386, 397. The decision made by Deputy Brett Nolin was made under the very circumstances described by the Court in *Graham v. Connor*.

CONCLUSION

We find that Deputy Brett Nolin acted lawfully in self-defense and defense of others when he used deadly force against Leroy Browning. We are closing our file and will take no further action.